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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Monday, April 6, 2020 8:39 AM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Subject:** RE: Motion to lift stay and motion to expedite

Brian—  
OK, I'll set aside some time tomorrow for a response on this.  
Take care, Lael

**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Sent:** Monday, April 6, 2020 8:11 AM  
**To:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Subject:** Re: Motion to lift stay and motion to expedite

Thanks Lael,

I appreciate you getting back to me so promptly. I will represent to the court that the State can file a response by Wednesday. As expressed in past emails, my concern is that the unnecessary delay will leave the court with little time to review the briefs prior to the Corps issuing its decision. As you are well aware, under the CWA regulations, the Corps cannot issue a decision with a Proposed Determination in place. If EPA unlawfully withdrew the Proposed Determination, it has significant legal bearing on the permitting process. If successful in the lawsuit, our relief would be significantly impaired should the Corps issue its record of decision prior to having the withdrawal of the Proposed Determination vacated. I understand your concerns regarding responding to the global pandemic. However, at this time, the only ones that would be impacted substantially during April, the period of the stay, are the parties, as we are in the midst of briefing. If the stay is lifted, we will conclude briefing at the end of the month, at the earliest. Because the attorneys for the case are all working remotely, and working just as much as they were prior to the stay at home orders, there is no substantial impact to our work by moving forward with this case at this time. Ultimately, the question is up to the court and as they instructed in their order, parties can seek relief if there is good cause. We believe good cause exists and the proper course is to file a motion to lift the stay with the court pursuant to MGO 20-11 B.5.

Sincerely, Brian

Brian Litmans  
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Pronouns: he/him



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**From:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Sent:** Monday, April 6, 2020 7:54 AM  
**To:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>; Nitzczynski, Mark (ENRD) <[Mark.Nitzczynski@usdoj.gov](mailto:Mark.Nitzczynski@usdoj.gov)>  
**Subject:** Re: Motion to lift stay and motion to expedite

Brian--I'm surprised the plaintiffs are moving forward with this so aggressively. The state's position continues to be what I sent in my email on Thursday--I just don't see that this is the kind of thing that needs the court's priority attention in a crisis. My reading of the standing order is that it's really up to the judges to let us know if they want our case to keep moving forward, not for us to be raising our hands. I certainly don't think this calls for expedited consideration. This Pebble issue has been out there in one form or another for a decade. Anyway, I suppose I'll file a short opposition to that effect if the plaintiffs file today. I think I can get it in by Wednesday. I don't want to make a big deal about it, honestly, I just can't agree this is an emergency when there are so many real emergencies out there. If you want to talk on the phone, I'm on my cell working from home these days 907 723 9947. Please feel free to call. Same goes for you Mark, if you want to discuss this.

--Lael

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**From:** Brian Litmans <[blitmans@trustees.org](mailto:blitmans@trustees.org)>  
**Sent:** Friday, April 3, 2020 6:43 PM  
**To:** Nitzczynski, Mark (ENRD) <[Mark.Nitzczynski@usdoj.gov](mailto:Mark.Nitzczynski@usdoj.gov)>  
**Cc:** Harrison, Lael (LAW) <[lael.harrison@alaska.gov](mailto:lael.harrison@alaska.gov)>  
**Subject:** Motion to lift stay and motion to expedite

Counsel,

In addition to filing a motion to lift the stay on Monday, we plan on filing a motion to expedite consideration. Can you please let me know your position by 11am Monday morning?

Thank you, Brian

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